INVESTIGATION REPORT

ADMINISTRATION OF URN GRAVE CEMETERIES

November 2004

Office of The Ombudsman

Hong Kong

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EXECUTIVE SUMMARY
Direct Investigation
on Administration of Urn Grave Cemeteries

Background

In Hong Kong, there are five public urn grave cemeteries ("金塔墳場"). The largest is in Wo Hop Shek with spaces for over 140,000 urn graves. The other four provide about 40,000 spaces.

2. These cemeteries were previously managed by the two Municipal Councils. Since 2000, Food and Environmental Hygiene Department ("FEHD") has taken over. Complaints to this Office and media reports have raised concern over their effective management. After preliminary inquiries into the administrative arrangements of FEHD for providing services in urn grave cemeteries, The Ombudsman decided to initiate a direct investigation under section 7(1)(a)(ii) of The Ombudsman Ordinance, Cap. 397. In a press conference held on 30 June 2004, The Ombudsman announced this direct investigation.

The Ambit

3. This direct investigation examines:

(a) the process of removal of remains from urn graves;

(b) post-removal follow-up action;

(c) the process of allocating new and vacated urn graves; and

(d) the system of maintenance of urn grave cemeteries.

Urn Grave Records

4. Some urn graves have existed since the 1950's. Government noted the need and decided to place them under control. In 1960, the Public Health and Municipal Services Ordinance, Cap. 132 and the Public Cemeteries Regulation, Cap. 132BI were enacted.

5. With the reorganisation of municipal services, FEHD took over the responsibility for administration of all urn graves on 1 January 2000. It attempted to transfer the records, some of them manual, to a new computer database ("History Database"). Unfortunately, flaws in data migration caused errors in the database. Consequently, FEHD could not rely on it completely and from time to time had to refer to the original manual records for confirmation.

6. In September 2001, FEHD put in place yet another new computer database ("Integrated Database"), which has the advantages of greater capacity and a fresh start. Since then, FEHD has been using this new database to process applications for new urn graves. The History Database and the manual records are kept for retrieval of pre-September 2001 records.

7. As FEHD has not fully verified the original records after the take-over due to resource constraint, it cannot be sure from these records whether an urn grave space is occupied and by whom. Undetected illegal burials and exhumations make the records even less reliable. Consequently, FEHD cannot rely on its records for allocating an existing urn grave space that has been vacated. Besides, such circumstances as landslips and overgrowth of trees may render a space not suitable for re-allocation. Staff have to check the space physically to ensure availability for re-allocation.

8. Again, for resource constraint reasons, FEHD has no intention to conduct a full survey to verify the serial number and location, occupancy/vacancy and "occupant" of each urn grave.

Urn Grave Space Allocation

9. A new urn grave space can be allocated to an eligible applicant within one day. For vacated spaces, because of the need for site visit (para. 7), allocation takes some three weeks.

10. FEHD charges $6,305 for an urn grave space, new or vacated. Over the last three years, a total of 2,312 urn grave spaces were allocated (758 in 2001, 772 in 2002 and 782 in 2003), generating revenue of $14.5 million.

Burials and Exhumations

11. Descendants who wish to bury or exhume remains are required to

apply to FEHD for a permit. They will then usually hire a contractor for the process. To ensure compliance with statutory requirements, FEHD staff either supervise the process or inspect the urn grave upon completion.

12. Burial and exhumation without FEHD permission constitutes a criminal offence. However, FEHD has no established procedures to prevent, deter or detect breach. The urn grave cemeteries are not fenced, guarded or regularly patrolled. An illegal urn grave can, therefore, escape detection for decades.

13. FEHD admits that without a full survey, the number of undetected illegal burials and exhumations cannot be ascertained. It stresses, however, that its staff diligently follow up complaints and check for suspicious urn graves in the course of their routine duties to ensure compliance.

Urn Grave Maintenance

14. Maintenance of urn graves is primarily the responsibility of descendants. FEHD carries out other aspects of maintenance such as clearing debris and fallen trees and repairing damage caused by landslips.

15. Sometimes, damage caused by landslips are irreparable. Urns are broken and remains mixed together. Remains no longer identifiable individually have to be re-buried together in a communal urn grave. At present, there are four communal urn graves. FEHD has informed the descendants concerned as far as possible based on available records.

Case Studies

16. To evaluate the adequacy and effectiveness of action taken by FEHD in looking after the urn grave cemeteries, we have studied some cases (para. 21).

Observations and Opinions

17. The size of the cemeteries and the massive number of urn graves make their administration difficult. However, this should be no excuse for lack of vigilance.

Urn Grave Records

18. FEHD currently maintains three sets of database, none of which can generate a reliable record (para. 7). However, FEHD seems to be content with such inadequate records. It has no intention whatsoever to improve the situation (para. 8). This is unsatisfactory and unacceptable.

Urn Grave Space Allocation

19. The allocation of vacated spaces is slow: this takes three weeks while new spaces can be allocated within one day (para. 9). The extra step being a site visit to verify availability. While conducting site visits is a good means to detect and deter illegal activities, this slows down allocation. If the

records were accurate, site visits would not be necessary in most cases.

20. The allocation of urn grave spaces generates income. Over the past three years, FEHD received over $14.5 million in allocating 2,312 spaces (para. 10). Some of this money should be used to rationalise the urn grave records, to improve their administration and to provide better service to the public.

Burials and Exhumations

21. Our case studies clearly show that there is room for improvement in the follow-up action on exhumation. At present, vacated urn graves are not marked on site. A signpost on a vacated space indicating its availability, informing the public of the application procedures and warning unscrupulous characters against illegal activities should minimise the possibility of illegal "recycling". It should also draw the attention of other descendants interested in the space.

22. In many cases, descendants were absent at the burial or exhumation process. If the three parties concerned (i.e. FEHD, descendants and contractors) were all there to witness the process and confirm the details, it would reduce, if not eliminate, the possibility of the wrong grave being exhumed.

23. Current measures against illegal burial and exhumation are piecemeal and ineffective (para. 12). As it is difficult to guard the whole area

and keep out potential offenders, it is important that illegal activities be deterred. A strong and clear message should be given to the public, particularly contractors and descendants, that illegal activities within cemeteries will not be tolerated. Instead, FEHD just let suspected offenders off and gave them covering approval on payment of the standard fee. As the case studies show, prosecution has never been contemplated.

24. There is no scheduled patrol, so detection depends on chance or enquiry and complaint. If, as FEHD claims, staff have carried out routine checks for irregularities, at least some suspicious graves or burials should have been detected and followed up for action (para. 13). However, all cases detected have resulted from enquiries, complaints or applications.

25. Few irregular cases have come to light. For well over four years since taking over in 2000, FEHD has to deal with only five cases, yet the follow-up action has been slow and dilatory. It takes months to post a notice, send a letter and conduct follow-up action. This is not acceptable.

26. In some cases, the irregularities persist but FEHD has no concrete plan to follow them up thoroughly.

27. Overall, this Office is astounded by FEHD's feeble action against illegal burials and exhumations. It is unethical and unfair to the deceased and their descendants and deprives Government of revenue. Illegal burials also mean lining the pockets of unscrupulous elements. The high level of easy profit and low risk of detection, and lower still of legal consequence, are

tantamount to encouraging unscrupulous elements to take their chances.

28. FEHD should have taken matters more seriously and considered steps, such as conducting a full survey, to ascertain the extent of illegal "recycling" cases. We find FEHD's attitude cavalier and somewhat callous.

29. Long-standing urn graves may no longer have visitors. FEHD has a duty to find and protect these graves. It should endeavour to identify these graves for tighter security measures, such as subjecting them to more frequent patrols and keeping appropriate record.

Urn Grave Maintenance

30. FEHD should remind descendants of their responsibilities for maintenance. As regards damage caused by landslips, it is unfortunate that some remains might never be identified (para. 15). To avoid recurrence of similar incidents, FEHD should enlist the assistance of the Government departments concerned to identify dangerous slopes within the cemeteries for preventive or remedial works where necessary. In case of landslips, FEHD should identify all the damaged graves and inform the descendants concerned.

Concluding Comments

Full survey

31. The lack of complete and accurate records of all urn graves has

contributed to inefficient and ineffective administration of urn grave cemeteries. The extent of illegal "recycling" unknown to FEHD is particularly worrying. A full survey is, therefore, necessary and not that costly (our estimate: $2.3 million) or difficult.

Long-term measures

32. FEHD must put in place long-term measures to prevent and detect such problems as illegal "recycling" of graves as well as to maintain accurate records. We see this as Government's duty in public service and proper respect for the deceased.

Recommendations

33. Admittedly, FEHD has taken over administration of urn grave cemeteries only since 2000. Still, it has been almost five years and time enough to put matters right.

34. It is time-honoured Chinese culture to respect our ancestors. Ching Ming and Chung Yeung have long been occasions for families to honour and remember our forebears at their graves. It is sad that this seems to be breaking down by neglect due to emigration, lack of descendants or their indifference. Government has a social responsibility to facilitate, encourage and sustain this culture of care and respect.

35. The Ombudsman makes the following recommendations to the

Director of Food and Environmental Hygiene:

(a) **General**

Staff attitude

i) instil among all staff concerned, including those in the frontline, due determination and a sense of duty to rectify irregularities: para. 17;

Full survey

ii) conduct a full survey to verify the information of each and every existing urn grave, identify areas with long-standing urn graves for tighter security measures and identify dangerous slopes for preventive and remedial works: paras. 29 to 32;

iii) transfer the data of the full survey to a computer database and fully test it to generate accurate, verified records: para. 5;

iv) when the new, fully tested database becomes ready, abolish the old computer databases and manual records: para. 18;

Long-term measures

v) consider alternative means for monitoring and random checks of high-risk areas to deter and detect illegal activities: para. 32;

vi) review and, where appropriate, update the statutory requirements;

(b) Administration of Urn Grave Cemeteries

Urn grave records

i) while the three sets of database are still in use, require staff concerned to maintain them properly and keep them accurate and up-to-date;

Urn grave space allocation

ii) review the process for allocating vacated urn grave spaces, to shorten the processing time: para. 19;

iii) when the new, fully tested database becomes ready, review the need for site visits before allocating vacated urn grave spaces to expedite

processing: para. 19;

Burials and exhumations

iv) review the follow-up action on approved burials and exhumations, e.g. consider setting up signposts for vacated spaces: para. 21;

v) through such means as messages on website and leaflets for applicants, inform descendants of the importance that they be present at the burial or exhumation: para. 22;

Illegal burials and exhumations

vi) publicise the possibility of prosecution and the penalty for illegal activities within cemeteries: para. 23;

vii) be firm with offenders, step up prosecution and introduce administrative sanctions such as maintaining a list of unscrupulous contractors for closer surveillance: para. 27;

viii) patrol cemeteries for random checks to detect suspicious graves and deter illegal activities: para.

24;

ix) prescribe a performance pledge for following up detected cases of irregularity: para. 25;

x) draw up concrete plans to follow up the five cases already detected: para. 26;

xi) keep appropriate records of long-standing urn graves and alert staff for closer monitoring: para. 29;

(c) Urn Grave Maintenance

i) through FEHD website and leaflets, educate descendants on their responsibility towards their deceased ancestors: para. 30;

ii) enlisting the assistance of departments concerned, arrange preventive and remedial works for dangerous slopes: para. 30; and

iii) in case of landslips, inform all descendants of the damaged graves, according to the verified records: para. 30.

Comments from FEHD

36. FEHD has accepted our recommendations. Implementation of some of them is underway.

Final Remarks from The Ombudsman

37. The Ombudsman is grateful for FEHD's cooperation in the investigation. She appreciates its readiness to implement our recommendations.

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1

INTRODUCTION

BACKGROUND

1.1 In Hong Kong, there are five public urn grave cemeteries ("金塔墳場"). The largest (probably the best known) is in Wo Hop Shek with spaces for over 140,000 urn graves. The other four are located in Sandy Ridge, Cheung Chau, Tai O and Lai Chi Yuen, providing about 40,000 spaces.

1.2 Urn grave cemeteries were previously managed by the two Municipal Councils. Since 2000, the Food and Environmental Hygiene Department ("FEHD") has taken over. Complaints to this Office and media reports have raised concern over their effective management. In one case, a man had been visiting his wife's grave in Wo Hop Shek Cemetery for over ten years. When he applied for exhumation, he found that he had been visiting an empty grave all those years, as his wife's remains had already been removed by a stranger years ago.

1.3 Maintenance matters, such as dilapidated headstones, have also been reported in the media and raised public concern.

1.4 Against this background, this Office conducted preliminary inquiries into the administrative arrangements of FEHD for providing services in urn grave cemeteries. On 3 June 2004, The Ombudsman informed the Director of Food and Environmental Hygiene ("DFEH") of her decision to initiate a direct investigation under section 7(1)(a)(ii) of The Ombudsman Ordinance, Cap. 397. In a press conference held on 30 June 2004, The Ombudsman announced this direct investigation.

PURPOSE AND AMBIT

1.5 Our aim is to identify gaps in, and improvement to, the management of urn grave cemeteries. The ambit of our investigation includes administrative arrangements relating to:

(a) the process of removal of remains from urn graves;

(b) post-removal follow-up action;

(c) the process of allocating new and vacated urn graves; and

(d) the system of maintenance of urn grave cemeteries.

METHODOLOGY

1.6 We have studied and analysed relevant information provided by FEHD, which includes administrative procedures, statistical data and known cases of irregularities. We held discussions with representatives of FEHD throughout the investigation. We visited Wo Hop Shek Cemetery to understand its layout, inspected the condition of some urn graves and interviewed a number of FEHD frontline staff.

1.7 Members of the public were invited to give comments and suggestions from 30 June to 30 July 2004.

INVESTIGATION REPORT

1.8 A draft investigation report was sent on 8 October 2004 to DFEH for comments. These were received on 20 October 2004. This final report was issued on 1 November 2004.

2

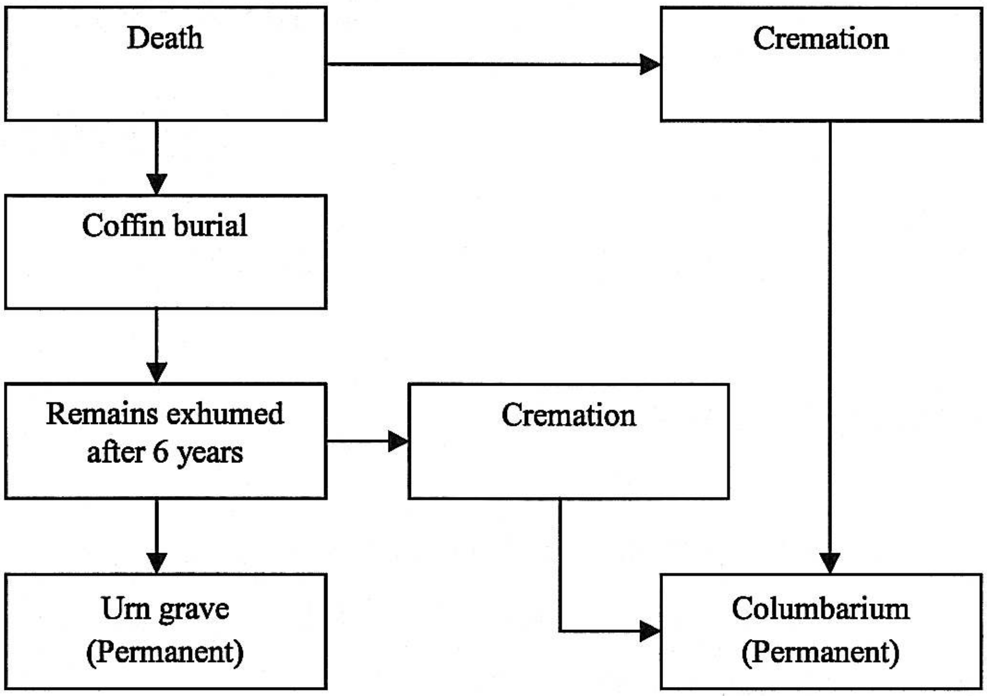
URN GRAVE BURIAL

LAST RESTING PLACE

2.1 Under the Public and Municipal Services Ordinance, Cap. 132, at eternal rest, a body may be cremated or buried. FEHD provides public services for cremation and burial of body and skeletal remains. If a body is cremated, the ashes of the deceased may be deposited permanently in a niche at a columbarium.

2.2 Coffin burials in public cemeteries are not permanent. Remains have to be exhumed after six years. Every year, FEHD publishes an exhumation order in the Government Gazette, requiring remains interred more than six years ago to be removed from the graves. FEHD also informs by letter descendants who have not effected timely exhumation. After exhumation, skeletal remains may be deposited in an urn for burial in a permanent urn grave, about half the space of a coffin grave. Alternatively, the disinterred skeletal remains may be cremated and the ashes deposited in a niche at a columbarium (para. 2.1), also permanently.

2.3 A flowchart illustrates the options:



2.4 The present investigation focuses on the administration of urn graves. Management of coffin burial spaces and columbarium depository is outside the scope of this report.

URN GRAVE ADMINISTRATION

2.5 According to traceable records, some urn graves in Wo Hop Shek have existed since the 1950's. They constituted the first urn grave cemetery. Government noted the need and decided to place them under control. In 1960,

the Public Health and Municipal Services Ordinance, Cap. 132 and the Public Cemeteries Regulation, Cap. 132BI were enacted.

2.6 Before 2000, urn grave cemeteries in the urban areas and the New Territories were under the administration of the Urban Services Department ("USD") and the Regional Services Department ("RSD") respectively. With the reorganisation of municipal services, FEHD took over the responsibility for administration of all urn graves on 1 January 2000. The number and rank of FEHD staff currently deployed for day-to-day operations in the five urn grave cemeteries are summarised in the following table:

Cemetery	Estimated no. of urn graves	Venue Manager	Assistant Venue Manager	Workman	Supporting staff	Strength
Wo Ho Shek	143,000	1	9	17	23	**50**
Sandy Ridge	30,000	1	2	9	21	**33**
Cheung Chau/ Tai O/ Lai Chi Yuen	13,000	0	2	1	2	**5**

Source: FEHD

Urn grave records

2.7 After the take-over, FEHD found that urn grave records kept by USD had been manually maintained, whereas those kept by RSD had been computerised, though the original manual records were still retained. FEHD attempted to transfer all these records to a new computer database ("the

History Database").

2.8 Unfortunately, probably because of flaws in the old electronic records, errors were found in the History Database. Consequently, FEHD could not rely on it completely and from time to time had to refer to the original manual register for confirmation.

2.9 In September 2001, FEHD put in place yet another new computer database, which has the advantages of greater capacity and a fresh start. Since then, FEHD has been using this new database ("the Integrated Database") to process applications for new urn graves. The History Database and the manual register are kept for retrieval of pre-September 2001 records.

2.10 As FEHD has not fully verified the original records after the take-over due to resource constraint, it cannot be sure from these records whether an urn grave space is occupied and by whom. Undetected illegal burials and exhumations make the records even less reliable. Consequently, FEHD cannot rely on its records for allocating an existing urn grave space that has been vacated. Besides, such circumstances as landslips and overgrowth of trees may render a space not suitable for re-allocation. FEHD staff have to check the space physically to ensure availability for re-allocation.

2.11 Again, for resource constraint reasons, FEHD has no intention to conduct a full survey to verify the location and number of all urn graves for the time being. "(We) see no imminent need to do so," says FEHD.

Urn grave space allocation

New spaces

2.12 Every year, FEHD estimates the demand for new urn grave spaces. It then slightly extends the perimeter of the urn grave cemeteries by obtaining assignment of a piece of the adjoining, undeveloped land for construction of new spaces. Such land is usually desolate and remote. The Architectural Services Department then arranges for levelling of the area and constructing means of access.

2.13 The new urn grave spaces are then open for allocation to the public. Demand for new spaces has been steady and within FEHD estimation. A new urn grave space can be allocated to an eligible applicant within one day.

Vacated spaces

2.14 New spaces are remote and usually without vehicular access. Some descendants, therefore, prefer vacated existing spaces. Although provided permanently, urn grave spaces are vacated for such reasons as descendants wishing to cremate and deposit the remains in a columbarium. On receiving an application for a vacated space from an eligible person[1], FEHD first checks against the database to verify the particulars. Its staff then conducts a site visit to make sure that the space is actually vacated and suitable for re-allocation (para. 2.10). The allocation of vacated urn grave spaces takes

[1] The next of kin of the deceased (i.e. spouse, adult sons or daughters, adult grandsons or granddaughters, parents, adult siblings etc) or other persons considered to have sufficient interest.

about three weeks.

2.15 FEHD charges $6,305 for an urn grave space, new or vacated.

2.16 The following table shows the number of urn grave spaces allocated in the last three years:

Cemetery	Urn grave spaces allocated		
	2001	2002	2003
Wo Hop Shek	585	570	557
Sandy Ridge	59	84	98
Cheung Chau	102	105	118
Tai O	2	1	1
Lai Chi Yuen	10	12	8
Total	**758**	**772**	**782**

Source: FEHD

Burials and exhumations

2.17 Having obtained an urn grave space, the descendants are required to apply to FEHD for a burial permit free of charge. They will then usually hire a contractor to put the remains into an urn, build the grave and erect a headstone. The size of the grave, the size of the headstone, the form of words on it, planting of shrub and erection of any fence are all regulated by law[2]. To ensure compliance, FEHD staff either supervise the burial process or inspect the urn grave upon completion. In case of deviation, the descendants will be

[2] Sections 7A and 8 of the Public Cemeteries Regulation.

asked to rectify. However, minor deviations may be tolerated.

2.18 Similarly, those who wish to remove remains from an urn grave apply for an exhumation permit at a fee of $120 (for urban cemeteries) or $275 (for cemeteries in the New Territories). On issue of a permit, the descendants will remove the headstone, clear the urn and reinstate the grave space, also usually by hiring a contractor. Again, FEHD staff either supervise the exhumation process or inspect the vacated space afterwards.

Illegal burials and exhumations

2.19 Under section 118 of the Public Health and Municipal Services Ordinance, burial and exhumation without FEHD permission constitutes a criminal offence. However, FEHD has no effective established procedures to prevent, deter or detect breach. The urn grave cemeteries are not fenced, guarded or regularly patrolled. An illegal urn grave can, therefore, escape detection for decades.

2.20 FEHD admits that without a full survey, the number of undetected illegal burials and exhumations cannot be ascertained. It stresses, however, that its staff diligently follow up complaints and check for suspicious urn graves in the course of their routine duties to ensure compliance (paras. 2.17 to 2.18).

2.21 Since taking over the responsibility on 1 January 2000, FEHD

has detected five cases of illegal activities, all in the Wo Hop Shek Cemetery. FEHD followed up those cases but never considered prosecution. To evaluate the adequacy and effectiveness of FEHD's detection of and follow-up action on illegal activities, we have studied these cases and summarised our findings in Chapter 3.

URN GRAVE MAINTENANCE

2.22 Maintenance of urn graves is the responsibility of descendants. If an urn grave is found to be dilapidated, FEHD will request the descendants to carry out repairs.

2.23 FEHD carries out other aspects of maintenance such as clearing debris and fallen trees and repairing damage caused by landslips.

2.24 The following table shows the number of urn graves found to be in unsatisfactory condition in the last three years:

Cemetery	**No. of urn graves in unsatisfactory condition**		
	2001	**2002**	**2003**
Wo Hop Shek	265*	47	184#
Sandy Ridge	4	5	3
Cheung Chau	1	2	7
Tai O	1	2	2
Lai Chi Yuen	1	1	3
Total	**272**	**57**	**199**

* includes 231 affected by landslips

includes 136 affected by landslips

Source: FEHD

2.25 Sometimes, damage caused by landslips are irreparable. Urns are broken and remains mixed together. Remains no longer identifiable individually have to be re-buried together in a communal urn grave.

2.26 At present, there are four communal urn graves, all in the Wo Hop Shek Cemetery. FEHD has informed the descendants affected as far as possible based on available records.

3

CASE STUDIES

3.1 To evaluate the adequacy and effectiveness of action taken by FEHD in looking after the urn graves cemeteries, we have studied some cases, summarised below.

EXHUMATION OF REMAINS

Case 1

3.2 In 1971, the deceased was buried in an urn grave in Wo Hop Shek Cemetery. The spouse swept the grave regularly. In 1985, a person applied for and obtained a permit for the exhumation of the remains. The remains were then exhumed, cremated and the ashes taken away.

3.3 The spouse did not know about the exhumation and continued to sweep the emptied grave. In 1993, the spouse noticed some damage to the headstone and had it repaired. In 2003, the spouse wished to have the remains cremated for columbarium depository and applied to FEHD for exhumation. After checking the records, FEHD advised that the remains had been exhumed in 1985.

3.4 Site inspections confirmed that the urn grave was empty. The spouse did not know the person ("the previous applicant") who had exhumed the remains in 1985. FEHD could not locate the previous applicant according to the address on record. As records kept before 1988 were incomplete, information on the relationship between the previous applicant and the deceased could not be traced. FEHD's further attempts to find out what had actually happened almost two decades ago also failed.

3.5 It turned out that the name of the deceased was quite common: over 90 urn graves in the cemetery carried the same name. It remains a mystery whether the previous applicant was a relative of the deceased unknown to the spouse or a relative of another deceased person with the same name or whether the remains had been mistakenly claimed for some other reasons.

ENFORCEMENT AGAINST ILLEGAL ACTIVITIES

Case 2

3.6 In October 2003, FEHD received an enquiry about the availability of a vacated urn grave space. A site visit revealed that the space was occupied. In January 2004, having verified that the burial was illegal, FEHD posted a notice of illegal burial on the grave, asking the descendants to contact FEHD.

3.7 A follow-up site visit in March 2004 revealed that the headstone

had been removed but the grave remained intact. As the descendants could not be located, FEHD closed the case.

Case 3

3.8 In May 2003, FEHD detected an illegal urn grave in response to a complaint. It posted a notice on the grave to draw the descendants' attention. There was no response. In November 2003, FEHD published a notice in the newspaper. If the descendants concerned did not contact FEHD, it would remove the unauthorised contents in the grave[3].

3.9 So far (almost one year after the notice was published), there has been no response. While FEHD is still trying to reach the descendants, it will not remove the unauthorised contents for the time being.

Case 4

3.10 In October 2003, FEHD received an application for exhumation of the remains from an urn grave. However, records showed the urn grave to be under a different name. A site visit revealed that the urn grave had been "recycled" without the knowledge of FEHD. The original remains had been illegally exhumed and the present remains illegally buried.

3.11 To follow up the illegal exhumation, FEHD tried to contact the

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[3] According to section 118 of the Public Health and Municipal Services Ordinance, if a burial is unauthorised, any human remains buried, or any urn or other receptacle containing any human remains deposited may be removed and disposed of in a decent manner.

descendants on record by sending them a letter in December 2003 but did not get any response. FEHD then posted a notice on the grave in March 2004. To date, there has been no response

3.12 FEHD will continue to try contact the descendants.

Case 5

3.14 This is similar to Case 4. The illegal "recycling" was detected in February 2004. Notices were posted on the grave in February and June 2004. On the latter occasion, a letter was also sent to the descendants on record.

Case 6

3.15 As a result of an enquiry in February 2004 about the availability of a vacated urn grave space, FEHD found an illegal burial in March 2004. Subsequently, the descendants obtained from FEHD covering approval and paid the burial fee of $6,305. The case was then closed.

4

OBSERVATIONS AND OPINIONS

4.1 The Wo Hop Shek Cemetery has an area of over 380 acres (approximately the size of 11 Kowloon Parks). The size of the cemeteries and the massive number of urn graves make their administration difficult. However, this should be no excuse for lack of vigilance.

4.2 Having examined FEHD's current administrative arrangements and the cases in Chapter 3, we have the following observations and opinions.

URN GRAVE RECORDS

4.3 FEHD currently maintains three sets of database, with September 2001 as the cut-off date. The original manual records and the History Database are used for retrieving pre-September 2001 data; the Integrated Database for retrieving post-September 2001 data and for recording new entries (para. 2.9). However, none of these databases can generate a reliable record

(paras. 2.8 and 2.10). Exacerbated by external factors such as landslips and overgrowth of trees, in processing applications concerning an existing urn grave space, a site visit is always necessary (para. 2.10).

4.4 After processing an application, the database must, of course, be updated. For the pre-September 2001 records, either the History Database or the manual records or both will require updating. However, the above cases cast doubt on whether it is properly done. In any event, a site inspection has to be made to verify the actual status of the grave. The records do not reflect the true state of affairs.

4.5 However, FEHD seems to be content with such inadequate records. It has no intention whatsoever to improve the situation (para. 2.11). This is unsatisfactory and unacceptable.

URN GRAVE SPACE ALLOCATION

4.6 Annual assignment of land for new grave spaces is well planned (para. 2.12) and their allocation prompt, within one day (para. 2.13). The process of allocating new spaces is satisfactory.

4.7 The problem lies with the allocation of vacated spaces. Processing is long, taking three weeks (para. 2.14). The extra step being a site visit to verify availability. While conducting site visits is a good means to detect and deter illegal activities, this slows down allocation. Yet, such site

visits are not essential, for invariably most applicants for vacated spaces become interested in them after viewing on site. Landslips or overgrowth of trees which render the spaces unsuitable for re-allocation should not be difficult for them to notice. If the records were accurate, site visits would not be necessary for each and every case.

4.8 The allocation of urn grave spaces generates income. Over the past three years, FEHD received over $14.5 million in allocating 2,312 spaces (paras. 2.15 to 2.16). Some of this money should be used to rationalise the urn grave records, to improve their administration and to provide better service to the public.

BURIALS AND EXHUMATIONS

4.9 During our visit to the Wo Hop Shek Cemetery, no irregularities such as oversized headstones were observed. We consider the supervision of the burial process or the inspection of the graves (para. 2.17) generally acceptable in ensuring compliance with legal requirements.

4.10 As regards follow-up action on exhumation (para. 2.18), Case 1 in Chapter 3 clearly shows that there is room for improvement. In that case, had the follow-up action after exhuming the remains been properly carried out, i.e. the urn and headstone removed and the space reinstated, the spouse of the deceased would have noticed and reported to RSD, the then administrator of the cemetery. Timely tracing of the exhumer could have rectified any

mistake.

4.11 At present, vacated urn graves are not marked on site. A signpost on a vacated space indicating its availability, informing the public of the application procedures and warning unscrupulous characters against illegal activities should minimise the possibility of illegal "recycling". It should also draw the attention of other descendants interested in the space.

4.12 In many cases, descendants were absent at the burial or exhumation process. If the three parties concerned (i.e. FEHD, descendants and contractors) were all there to witness the process and confirm the details, it would reduce, if not eliminate, the possibility of the wrong grave being exhumed (para. 3.5).

ILLEGAL BURIALS AND EXHUMATIONS

4.13 Current measures against illegal burial and exhumation are piecemeal and ineffective (para. 2.19). As it is difficult to guard the whole area and keep out potential offenders, it is important that illegal activities be deterred. A strong and clear message should be given to the public, particularly contractors and descendants, that illegal activities within cemeteries will not be tolerated. Instead, FEHD has just let suspected offenders off and given them covering approval on payment of the standard fee (para. 3.15). As the case studies show, prosecution has never been contemplated (para. 2.21).

4.14 There is no scheduled patrol, so detection depends on chance or enquiry and complaint. If, as FEHD claims, staff have indeed carried out routine checks for irregularities, at least some suspicious graves or burials should have been detected and followed up for action (para. 2.20). However, all cases detected have resulted from enquiries, complaints or applications (Cases 2 to Cases 6 of Chapter 3).

4.15 Few irregular cases have come to light. For well over four years since taking over in 2000, FEHD has to deal with only a handful of cases, yet the follow-up action has been slow and dilatory. In Case 2 (paras. 3.6 to 3.7), the posting of a notice took three months and the follow-up site visit another two. Halfway in the process, FEHD gave up and closed the case. This is not acceptable.

4.16 Case 3 (paras. 3.8 to 3.9) was detected in May 2003. Other than the futile attempts to reach the descendants, FEHD is taking no other action. Even now (October 2004), the case is still outstanding.

4.17 In Case 4 (paras. 3.10 to 3.13), FEHD took almost two months to send a letter and five to post a notice. The case is now one year old and still outstanding.

4.18 In Case 5 (para. 3.14), the issue of a letter to the descendants took almost four months. Eight months have elapsed since the case was detected in February 2004 and FEHD is still trying to find the descendants.

4.19 In these cases, the irregularities persist. Meanwhile, FEHD has no concrete plan to follow them up thoroughly.

4.20 Case 6 was the only case where the descendants, or offenders, were found. FEHD did not even consider the possibility of prosecution and concluded the case by just asking the offenders to pay the normal allocation fee of $6,305.

4.21 Overall, this Office is astounded by FEHD's feeble action against illegal burials and exhumations. Knowing that some existing urn graves have no regular visitors, an unscrupulous character may well dispose of the remains and sell the vacated spaces as his own property. Illegal burials are not only unethical but also deprive Government of revenue at $6,305 per space and line the pockets of unscrupulous elements. For the few offenders caught, FEHD has only asked for payment of the standard fee. The high level of easy profit and low risk of detection, and lower still of legal consequence, are tantamount to encouraging unscrupulous elements to take their chances.

4.22 We believe this is what happened in Cases 4 and 5 in Chapter 3. This is particularly unethical and unfair to the deceased and their descendants.

4.23 Seen against the above, we find FEHD's attitude cavalier and somewhat callous. It should have taken matters more seriously and considered steps, such as conducting a full survey, to ascertain the extent of illegal "recycling". This would involve verification of the serial number and location, occupancy/vacancy and "occupant" of each urn grave. As shown in

para. 4.29, such a survey should cost only about $2.3 million, less than half of the average annual income gained from allocation of urn grave spaces (para. 4.8). We, therefore, cannot accept FEHD's refusal to take any action on the pretext of resource constraint (para. 2.11).

4.24 Long-standing urn graves may no longer have visitors. FEHD has a duty to find and protect these graves. It should endeavour to identify these graves for tighter security measures, such as subjecting them to more frequent patrols and keeping appropriate records.

URN GRAVE MAINTENACE

4.25 Descendants are primarily responsible for maintaining the urn graves of their deceased ancestors (paras. 2.22 to 2.23). FEHD should remind descendants of their responsibilities for maintenance.

4.26 As regards damage caused by landslips, it is unfortunate that some remains might never be identified (para. 2.25). To avoid recurrence of similar incidents, FEHD should enlist the assistance of the Government departments concerned to identify dangerous slopes within the cemeteries for preventive or remedial works where necessary. In case of landslips, FEHD should identify all the damaged graves and inform the descendants concerned.

CONCLUDING COMMENTS

Full survey

4.27 The lack of complete and accurate records of all urn graves has contributed to inefficient and ineffective administration of urn grave cemeteries. The extent of illegal "recycling" unknown to FEHD is particularly worrying. A full survey is, therefore, necessary and not that costly or difficult.

4.28 In this connection, this Office has made rough calculations of the resources required. If Wo Hop Shek Urn Grave Cemetery were divided into four quarters, each would comprise about 35,000 urn graves (140,000 urn graves/4). A team of five enumerators, with one of them as supervisor, can be deployed for each quarter. The supervisor conducts random checks and quality control on the lists compiled by his teammates. If the verification of one urn grave takes 12 minutes, then in an eight-hour working day, a team should be able to verify 160 urn graves (4 persons x 5 urn graves per hour x 8 hours). To verify 35,000 urn graves takes approximately nine months (35,000 urn graves/160 verifications per day/24 working days per month). If we allow another three months for the supervisors, each assisted by one enumerator, to complete the paper work and data entries, the survey takes about one year. The other four cemeteries have approximately 40,000 urn graves and, therefore, a fifth team would take care of them.

4.29 In accordance with the above calculations, FEHD would need to offer a nine-month contract to 15 enumerators and a one-year contract to ten. If the average monthly salary of the enumerators is $9,000, then the total cost of the survey would be around $2.3 million (15 enumerators x $9,000 x 9

months + 10 enumerators x $9,000 x 12 months).

4.30 Alternatively, FEHD may consider contracting out the survey to private companies.

Long-term measures

4.31 FEHD must put in place long-term measures to prevent and detect such problems as illegal "recycling" of graves as well as to maintain accurate records. In this regard, we recognise the resource requirements for regular patrol and routine surveillance. However, FEHD should explore less manpower-intensive alternative means for monitoring (such as night vision cameras) and random checks of high-risk areas (e.g. those with long-standing urn graves) to detect and deter illegal burial and exhumation. We see this as Government's duty in public service and proper respect for the deceased.

4.32 FEHD should consider improvement measures within its existing resources. However, the current fee has not been reviewed since it took over the responsibility of urn grave administration in 2000. It should not rule out the possibility of raising the fee for the allocation of urn grave spaces. The discerning public will accept a reasonable increase if this is shown to be worthwhile.

A FURTHER NOTE

4.33 In the course of this direct investigation, we noted that FEHD

may not have complied fully with certain statutory regulations. These observations are offered here for FEHD to consider appropriate follow-up action.

4.34 Section 4 of the Public Cemeteries Regulation provides that at every public cemetery, there shall be kept a register containing particulars of the deceased whose remains are deposited there. However, at present, only two of the five cemeteries have such a register.

4.35 Section 12 of the Regulation provides that no fee shall be payable in respect of the interment of a poor person. However, there is no mechanism for waiving any of the prescribed fees for any person. In this connection, we note that the Social Welfare Department offers to the needy a grant for burial. In practical term, the purpose of this provision is served.

5

RECOMMENDATIONS

5.1 Admittedly, FEHD has taken over administration of urn grave cemeteries only since 2000. Still, it has been almost five years and time enough to put matters right. There are quite a number of deficiencies discovered in this direct investigation: inaccurate records, slow and cumbersome allocation of vacated spaces, undetected illegal "recycling" of urn graves, ineffective detection of irregularities and dilatory follow-up action on detected irregularities. Meanwhile, throughout this investigation, FEHD staff interviewed appeared to be indifferent to the problems. This apathy must change. FEHD must show determination to tackle the problems positively and proactively.

5.2 It is time-honoured Chinese culture to respect our ancestors. Ching Ming and Chung Yeung have long been occasions for families to get together to honour and remember their forebears at their graves. It is sad that this seems to be breaking down by neglect due to emigration, lack of descendants or their indifference. Government has a social responsibility to facilitate, encourage and sustain this culture of care and respect.

5.3 On the basis of our observations, The Ombudsman makes the

following recommendations to DFEH:

(a) General

Staff attitude

i) instil among all staff concerned, including those in the frontline, due determination and a sense of duty to rectify irregularities: para. 5.1;

Full survey

ii) conduct a full survey to verify the information of each and every existing urn grave, identify long-standing urn graves for tighter security measures and identify dangerous slopes for preventive and remedial works: paras. 4.24, 4.26 to 4.27 and 4.31;

iii) transfer the data of the full survey to a computer database and fully test it to generate accurate, verified records: para. 2.8;

iv) when the new, fully tested database becomes ready, abolish the old computer databases and manual records: paras. 4.3 and 4.5;

Long-term measures

v) consider alternative means for monitoring and random checks of high-risk areas to deter and detect illegal activities: para. 4.31;

vi) review and, where appropriate, update the statutory requirements: paras. 4.33 to 4.35;

(b) Administration of Urn Grave Cemeteries

Urn grave records

i) while the three sets of database are still in use, require staff concerned to maintain them properly and keep them accurate and up-to-date: para. 4.4;

Urn grave space allocation

ii) review the process for allocating vacated urn grave spaces, to shorten the processing time: para. 4.7;

iii) when the new, fully tested database (para.

5.2(a)(iii)) becomes ready, review the need for site visits before allocating vacated urn grave spaces to expedite processing: para. 4.7;

Burials and exhumations

iv) review the follow-up action on approved burials and exhumations, e.g. consider setting up signposts for vacated spaces: para. 4.11;

v) through such means as messages on website and leaflets for applicants, inform descendants of the importance that they be present at the burial or exhumation: para. 4.12.

Illegal burials and exhumations

vi) publicise the possibility of prosecution and the penalty for illegal activities within cemeteries: para. 4.13;

vii) be firm with offenders, step up prosecution and introduce administrative sanctions such as maintaining a list of unscrupulous contractors for closer surveillance: para. 4.21;

viii) patrol cemeteries for random checks to detect suspicious graves and deter illegal activities: para. 4.14;

ix) prescribe a performance pledge for following up detected cases of irregularity: paras. 4.15 to 4.18;

x) draw up concrete plans to follow up the five cases already detected: para. 4.19;

xi) keep appropriate records of long-standing urn graves with no regular visitors and alert staff for closer monitoring: para. 4.24;

(c) **Urn Grave Maintenance**

i) through FEHD website and leaflets, educate descendants on their responsibility towards their deceased ancestors: para 4.25;

ii) enlisting the assistance of departments concerned, arrange preventive and remedial works for dangerous slopes: para. 4.26; and

iii) in case of landslips, inform all descendants of the affected graves, according to the verified urn

grave records: para. 4.26.

6

FINAL REMARKS

COMMENTS FROM FEHD

6.1 We have studiously examined FEHD's comments on the draft investigation report and where appropriate, incorporated its views and textual amendments.

6.2 On the reliability of the records (paras. 4.3 to 4.5), FEHD says that a comprehensive record of urn graves can be obtained by retrieving data from the manual register and the Integrated Database. However, this may not reflect the up-to-date position because of such problems as landslips and overgrowth of trees.

6.3 On its follow-up action on irregular cases (paras. 4.15 to 4.20), FEHD indicates that as the action may affect the "tranquillity" of the deceased and cause trauma to the descendants, it has a duty to handle the cases with extreme care.

6.4 FEHD has accepted our recommendations. Implementation of

some of them is already underway.

FINAL REMARKS FROM THE OMBUDSMAN

6.5 The Ombudsman is grateful for FEHD's cooperation throughout the investigation and the prompt and positive response to our findings.

6.6 On the reliability of the records (para. 6.2), The Ombudsman notes that due to failure to verify the records after the take-over (para. 2.10), failure to update the records properly after processing an application (para. 4.4) and undetected illegal activities (para. 2.20), the records are neither complete nor accurate. In any case, once FEHD has conducted the full survey we recommended in para. 5.3 (a)(ii) to (iv) and transferred the data to a new accurate database, the problem will be solved.

6.7 As regards FEHD's caution in handling irregular cases (para. 6.3), The Ombudsman considers that taking months to post a notice or send a letter (paras. 4.15 and 4.17 to 4.18), giving up halfway in the follow-up process (para. 4.15) and allowing the irregularities to persist with no concrete plan to follow through (para. 4.19) demonstrate indifference to problems and lack of will for improvement. Caution is commendable but not an excuse for inertia or inaction. In any case, The Ombudsman's recommendation is for firmer action against offenders (para. 5.3(b)(vii)), not against innocent descendants or disturbance of the deceased. In this connection, FEHD should seek legal advice on the implications of prosecuting the offenders without affecting the

deceased or worrying the descendants.

6.8 In conclusion, The Ombudsman appreciates FEHD's readiness to implement our recommendations. She thanks DFEH and his staff for assistance throughout this investigation.

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Office of The Ombudsman

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